

# EXHIBIT 19

Hunters Capital, LLC v. City of Seattle

Kevin T. Faulkner

Page 1

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

---

HUNTERS CAPITAL, LLC, et al.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 20-cv-00983-TSZ
	)	
CITY OF SEATTLE,	)	
	)	
Defendant.	)	

---

VIDEOTAPED VIDEOCONFERENCE DEPOSITION  
UPON ORAL EXAMINATION OF  
KEVIN T. FAULKNER

---

New York, New York

(All participants appeared via videoconference.)

DATE TAKEN: AUGUST 17, 2022  
REPORTED BY: CINDY M. KOCH, RPR, CRR, CCR #2357

BUELL REALTIME REPORTING, LLC  
206.287.9066 | 800.846.6989

Hunters Capital, LLC v. City of Seattle

Kevin T. Faulkner

Page 32

1 Q. Did you learn that information in 2022, or was  
2 it as early as 2021?

3 A. Other than knowing it must have been before my  
4 rebuttal report, I don't recall the date.

5 Q. Can you recall whether -- whether you had this  
6 conversation before or after you saw the Brandon Leatha  
7 report, which was issued on April 28th of 2022?

8 A. I don't recall.

9 Q. Other than the issue of the two phone numbers,  
10 what else did you talk with Mr. Fisher about?

11 A. I recall asking about credentials to get access  
12 to his iCloud account, and that he could not -- the City  
13 iCloud account, and that he could not recall those  
14 credentials. So I was not able to collect data from the  
15 account.

16 Q. Did he ever provide the credentials for his  
17 iCloud account for you?

18 A. Not to me, no.

19 Q. Did you make any follow-up requests to him or  
20 to the City attorneys for that information?

21 MR. CRAMER: You can testify as to inquiries  
22 you made to Mr. Fisher, but communications with Counsel  
23 would be privileged and work product.

24 A. I did not follow up with Mr. Fisher to request  
25 that, no.

Hunters Capital, LLC v. City of Seattle

Kevin T. Faulkner

Page 56

1 MR. CRAMER: Objection. Form.

2 Go ahead.

3 A. Again, I'm not -- I'm not sure what document  
4 you're referring to. I'm sorry.

5 BY MR. REILLY-BATES:

6 Q. Okay. Now, I think you mentioned that Palo  
7 Alto Networks was retained by the City in November of  
8 2020. Is that correct?

9 A. Yes. I believe it was November 5, 2020.

10 Q. And you were retained pursuant to a statement  
11 of work; correct?

12 A. I believe that's right, yeah. A statement of  
13 work and master services agreement, or something along  
14 those lines.

15 Q. And were you involved in the negotiation of  
16 that statement of work?

17 A. I don't believe so, no.

18 Q. To the best of your recollection, can you  
19 recall what the scope of your initial engagement was  
20 with the City?

21 A. Generally, to see what text message information  
22 could be recovered from the mayor's cellphone or any  
23 other data sources. And to the extent it couldn't, try  
24 to understand what had happened.

25 Q. Okay. At that time your -- the scope of your

Hunters Capital, LLC v. City of Seattle

Kevin T. Faulkner

Page 84

1 A. Yes, it is.

2 Q. And this is a true and correct copy of your  
3 expert report in this case; correct?

4 A. I haven't verified that, but I have no reason  
5 to doubt it.

6 Q. Okay. Are all the factual statements contained  
7 in this report still accurate statements today?

8 A. I'd say, for the most part, yes. But there are  
9 a few points I would probably clarify.

10 Q. Okay. Let's talk about those. What -- what  
11 issues would you clarify with Exhibit 2?

12 A. Let's see. On -- on Page 25, there is a  
13 Footnote 17, and Footnote 17 talks about how messages  
14 that were deleted by the retention settings on a phone  
15 may be difficult to tell apart from messages that were  
16 manually deleted.

17 That is still true. It may be difficult. But  
18 in this case, I came to realize, in preparation for this  
19 deposition, that it's not difficult to tell them apart  
20 for the mayor's phone, and that the artifacts are not  
21 consistent with a manual deletion. That's -- that's not  
22 really a possibility in this case.

23 Q. Okay. And does that change any of the other  
24 conclusions contained in -- in your expert report,  
25 Exhibit 2?

1           A. That -- I don't believe that changes anything  
2 else that I have listed here, and -- but again, there is  
3 one other thing I would clarify.

4           Q. Okay. And what's that?

5           A. When I talk about the enabling of retention  
6 settings, changing retention settings to 30 days, or  
7 changing retention settings back to forever, I use terms  
8 like -- that one of those changes may have -- may have  
9 occurred on one of the mayor's phones.

10           The change back to forever would -- you know,  
11 would -- would have occurred on the iPhone 11. And  
12 in -- again, in preparation for this deposition,  
13 reviewing the information that I previously considered,  
14 and doing some additional testing, I came to learn that  
15 you can actually change the retention settings to 30  
16 days, to one year, or back to forever, not just on the  
17 physical phone in your hand, but also on any other phone  
18 that is on the same iCloud account, where all -- where  
19 the phones have messages in iCloud enabled.

20           Basically if you -- if you set 30 days on one  
21 phone, any other phone on the account will automatically  
22 change to that same retention setting without you having  
23 to do anything on that additional phone.

24           Q. I see. And have you then followed up with any  
25 research or investigation to determine whether there

Hunters Capital, LLC v. City of Seattle

Kevin T. Faulkner

Page 93

1 Do you mind if we just finish out this line of  
2 questions?

3 MR. CRAMER: That's fine.

4 MR. REILLY-BATES: But I'll be pretty quick.

5 BY MR. REILLY-BATES:

6 Q. Exhibit 4 is the expert report of Brandon  
7 Leatha regarding the inspection of certain City-issued  
8 cellular telephones used by specific City of Seattle  
9 officials, and it's dated, I think, April 28, 2022.

10 Mr. Faulkner, do you have Exhibit 4 up?

11 A. I do, yes.

12 Q. And have you had a chance to review Exhibit 4  
13 before today?

14 A. Yes.

15 Q. And in fact, Exhibit -- you reviewed Exhibit 4  
16 while you were creating your rebuttal report, Exhibit 3;  
17 correct?

18 A. Yes, that's right.

19 Q. Okay. Now, take a look through Exhibit 4, and  
20 please let me know if there are any other conclusions or  
21 factual statements that aren't mentioned in your  
22 rebuttal report, Exhibit 3, that -- that you would still  
23 take issue with today?

24 A. Okay. I will take a look. I've come across  
25 one example.

1 Q. Okay. Which page are you on?

2 A. I am on Page 3 of Mr. Leatha's report.

3 Q. Okay.

4 A. And I see, in his summary of findings, under  
5 the third bullet point, related to Mayor Jenny Durkan,  
6 Mr. Leatha states, "All of Mayor Jenny Durkan's text  
7 messages were deleted from her iCloud account using the  
8 disable and delete function on July 4, 2020."

9 Q. Okay.

10 A. And I would say that we don't -- he and I both  
11 do not know that to be the case. They -- while the  
12 disable and delete function will delete messages after  
13 30 days, it only does so if it remains enabled, and we  
14 don't know whether it remained enabled or not.

15 Q. Okay. So if it had remained enabled, it would  
16 have deleted all of her messages on -- 30 days later,  
17 correct, on August 4, 2020? Is that a fair statement?

18 MR. CRAMER: Objection. Incomplete  
19 hypothetical.

20 Go ahead.

21 A. No. I would say, if the disable and delete  
22 function was allowed to continue and was on the last  
23 device connected to the iCloud account, then it would  
24 delete just the copy of messages in iCloud after 30  
25 days.



1 But if there are other phones connected to the  
2 account or if you reconnect a phone to the account  
3 within that 30 days, it cancels off that process.

4 BY MR. REILLY-BATES:

5 Q. Okay. So do you have any evidence that another  
6 phone was connected to Mayor Jenny Durkan's iCloud  
7 account within 30 days?

8 A. I don't know one way or the other.

9 Q. And are there any tests that you could -- you  
10 could run to -- to discover that information, that you  
11 can think of today?

12 A. Not that I can think of today, no.

13 Q. And there are no -- there are no sources of  
14 information that you could look -- look at to -- to find  
15 that information; correct?

16 A. I mean, source of information, perhaps. I  
17 recall the deposition transcript from Emmanuel Arhu  
18 where he testified that, after transferring the data  
19 over to the mayor's iPhone 11, he then re-enabled  
20 messages in iCloud.

21 So that -- that's a source of information to  
22 look at, is that -- that deposition transcript. If he  
23 indeed did that, that would have the effect of canceling  
24 the disable and delete function.

25 Q. Okay. So it's your testimony today that if he

1 had, in fact, re-enabled the messages in iCloud, that  
2 that could have canceled the disable and delete and  
3 would have prevented the messages from being deleted  
4 after 30 days; correct?

5 MR. CRAMER: Objection. Incomplete  
6 hypothetical.

7 Go ahead.

8 A. What I'm saying is that, if he re-enables  
9 messages in iCloud on the phone he testified he did, or  
10 any other phone, it would have the effect of canceling  
11 off the disable and delete, and the copy of messages in  
12 iCloud then would not be deleted 30 days later.

13 BY MR. REILLY-BATES:

14 Q. Okay. So as you're sitting there today, do you  
15 know whether or not the messages in iCloud were, in  
16 fact, deleted 30 days after July 4, 2020?

17 A. I would say, sitting here today, you can't tell  
18 one way or the other.

19 Q. Do you -- do you know when those messages were  
20 deleted, if they weren't deleted by the disable and  
21 delete that was selected on July 4, 2020?

22 A. If they weren't deleted by the disable and  
23 delete, then they could have been deleted by the -- by a  
24 30-day retention setting.

25 Q. And -- I see. So do you plan on -- on issuing

Hunters Capital, LLC v. City of Seattle

Kevin T. Faulkner

Page 104

1 I believe I reported upon that in my next report, the  
2 rebuttal report. But this is the -- the goals of the  
3 investigation within the scope of my opening report.

4 Q. And -- but at the time of your opening report,  
5 you were already looking into whether those individuals  
6 were missing text messages; right?

7 A. I believe that's right, yes. Had started.

8 Q. Okay. Why didn't you include that as one of  
9 the goals of your investigation in your initial report?

10 MR. CRAMER: Objection. I believe that  
11 that's outside the scope of permissible testimony. I  
12 mean, what are -- what we may or may not have asked him  
13 to testify to is protected work product under Rule 26.

14 MR. REILLY-BATES: And, Shane, if you could  
15 limit your -- your objections so that they're not  
16 speaking objections, I would appreciate that, please.

17 BY MR. REILLY-BATES:

18 Q. You may answer the question.

19 A. As I testified before, the work on the other  
20 custodians was not yet complete, and -- yeah, it was --  
21 it was still in progress.

22 Q. Now, immediately below these two goals, there's  
23 a sentence that states, "One aspect that was not a focus  
24 of this investigation was to assess who made any changes  
25 to settings on the mobile phones of Mayor Durkan and

1 Chief Best that may have been made."

2 Do you see that?

3 A. I see that sentence, yes.

4 Q. Why was that not a focus of the investigation?

5 A. Well, generally, the data on a device doesn't  
6 tell you who made a change to that device. The device  
7 records information about configuration and data  
8 transmitted and received, but it doesn't know who's  
9 holding it or, in the case of a laptop, whose hand is on  
10 the keyboard.

11 So my focus was on the technology and what the  
12 technology shows and what different actions might be  
13 consistent with data found on the devices.

14 Q. So is it your belief that the technology does  
15 not show or could not show who made changes to settings  
16 on the mobile phones of Mayor Durkan and Chief Best?

17 A. I would say that, generally, any device doesn't  
18 record who is using it. You have to -- you would have  
19 to combine that with some other source of information to  
20 try to piece that together. The phone doesn't take a  
21 picture of who's changing the settings as they change it  
22 or anything like that.

23 Q. And you did look at testimony; for example, I  
24 believe you cited Emmanuel Arhu's statements about  
25 setting up messages in iCloud for other situations.

1 have been overwritten.

2 BY MR. REILLY-BATES:

3 Q. Okay. And normally iCloud -- or Apple only  
4 stores an iCloud backup for 180 days; is that correct?

5 A. Generally, yes.

6 Q. Are you aware of any exceptions that apply in  
7 this case, to your knowledge?

8 A. That apply in this case? No, none that I'm  
9 aware of.

10 Q. Can you explain the messages disable and delete  
11 function that's described in your report on Page 28, the  
12 next page of Exhibit 2?

13 A. I'm -- oh, there it is. I just found the  
14 mention of it on Page 28.

15 Q. Yes. It's the third paragraph down, I believe,  
16 yes.

17 A. But I -- sorry; what's your question? About --

18 Q. Sure. Can you explain -- can you explain that  
19 function, messages disable and delete function, what it  
20 is?

21 A. Certainly. Disable and delete will --  
22 specifically for messages in iCloud will stop a phone  
23 from synchronizing its messages to iCloud, which, of  
24 course, means that it must have first been synchronizing  
25 in order to use that function.

1           When you use disable and delete, it stops that  
2           synchronization process, and if it is the last device on  
3           the account, it then will delete the copy up in iCloud  
4           after 30 days from when that function was used.

5           Q. Okay. What reasons would a user change this  
6           setting on their phone for?

7           MR. CRAMER: Objection. Form. Outside the  
8           scope of his expertise and expert opinions.

9           A. I mean, I would say that the -- the function to  
10          stop synchronizing messages and remove the copy of data  
11          from iCloud -- copy of messages in iCloud would be why  
12          someone would use that function, to -- to -- to make  
13          that -- that happen, I suppose.

14         BY MR. REILLY-BATES:

15          Q. All right. So it would -- selecting the  
16          disable and delete function can eventually lead to  
17          removing all of the synchronized messages that are in  
18          the iCloud, to have them delete -- be deleted; correct?

19          A. It can do that, yes. So if a user wanted to  
20          delete those, if they wanted to reclaim space or just  
21          remove that additional copy, they could use this  
22          function to do so.

23          Q. And did Jenny Durkan ever tell you that she  
24          used this function in order to get a copy of her text  
25          messages back onto her phone after she installed a

Hunters Capital, LLC v. City of Seattle

Kevin T. Faulkner

Page 128

1 A. I see Figure 13.

2 Q. And is this a figure showing how a user would  
3 select the disable and delete function on an iPhone?

4 A. This is a figure showing a few different  
5 setting screens to get to the disable and delete  
6 function, and then the message that it displays if you  
7 were to choose it.

8 Q. Okay. So -- so there are four arrows shown on  
9 this page. So a user would have to make four separate  
10 selections to finally delete the messages on their  
11 iPhone; correct?

12 MR. CRAMER: Objection. Form.

13 A. No, that's incorrect.

14 BY MR. REILLY-BATES:

15 Q. Okay. How is it incorrect?

16 A. You said to delete the messages on their  
17 iPhone. The disable and delete function has no bearing  
18 on the messages on their iPhone.

19 Q. My apologies. Yeah.

20 So a user would have to select -- click through  
21 each one of those four arrows to delete the messages in  
22 iCloud through the disable and delete function; correct?

23 A. They would have to click through these  
24 selections to initiate the disable and delete process,  
25 but again, it doesn't then immediately delete anything

1 from anywhere.

2 It then starts a -- a countdown to delete the  
3 copy up in iCloud if it's not otherwise canceled by  
4 re-enabling messages in iCloud.

5 Q. Okay. And the countdown is a 30-day countdown;  
6 correct?

7 A. That's correct, yes.

8 Q. So after the 30 days, if -- if the countdown is  
9 not canceled, then the messages in iCloud would be  
10 deleted. Is that a fair statement?

11 A. I believe so. They're around. I don't know if  
12 it ever spills over to 31 or not, but it's -- it should  
13 be about 30 days, yes.

14 Q. Okay. And let's go to the fourth image there  
15 at the top of Page 18, the message -- the warning  
16 message. It says, "Disable and delete. This will  
17 disable messages in iCloud and delete all your messages  
18 stored in iCloud. You have 30 days to undo this action.  
19 Your device will automatically download your messages."

20 Is that a fair reading of that -- that warning?

21 MR. CRAMER: Objection. Misstates testimony  
22 as to the use of the word "warning."

23 A. Yeah, I believe you read the message correctly,  
24 but I see no word like "warning," colon, on top of it or  
25 anything like that, but I do see the message, and I



Hunters Capital, LLC v. City of Seattle

Kevin T. Faulkner

Page 130

1 believe you read the text of the message accurately.

2 BY MR. REILLY-BATES:

3 Q. Okay. And in July of 2020, if a person had  
4 selected disable -- the disable and delete function,  
5 would they have received a message identical to this or  
6 similar to this, to the best of your knowledge?

7 A. I believe they would receive a message similar  
8 to this.

9 Q. Now, would you agree that the disable and  
10 delete function was completed at 5:19 Pacific Daylight  
11 Time on July 4, 2020?

12 A. I would have to double check the time in my  
13 report.

14 Q. Okay. Let's look at Page 28 then.

15 A. I'm on 28.

16 Q. Okay. Second paragraph from the bottom.

17 A. I see the time listed there as 5:19:44 Pacific  
18 Daylight Time, p.m.

19 Q. Okay. And -- so -- so you were able to  
20 determine that somebody did select the disable and  
21 delete function at 5:19 Pacific Daylight Time on July 4,  
22 2020; correct?

23 MR. CRAMER: Objection. Misstates earlier  
24 testimony.

25 A. I would say the artifacts are consistent with

Hunters Capital, LLC v. City of Seattle

Kevin T. Faulkner

Page 151

1 Q. Braden --

2 A. -- his first name.

3 Q. Okay. And so just to be clear, you did not  
4 have any forensic artifacts to suggest that there was a  
5 factory reset in August of 2020. That was solely based  
6 on the testimony that you heard, that it was the  
7 customary practice to reset a phone; correct?

8 A. Yes, I believe that's fair. Correct.

9 Q. Okay. Now, were you aware that on  
10 September 18th Emmanuel Arhu delivered the mayor's  
11 iPhone 8 Plus FirstNet to Braden Heil to conduct a  
12 forensic examination of -- of the mayor's phone?

13 A. I recall that the phone was delivered to  
14 Mr. Heil on September 18th. I don't recall who  
15 delivered it, sitting here today.

16 Q. Okay. Do you think it's unusual that the phone  
17 was factory reset on September 17th, a day before it was  
18 to be delivered to the City's information security  
19 engineer?

20 MR. CRAMER: Objection. Form. Outside the  
21 scope, calls for speculation.

22 Go ahead.

23 A. I would say that the phone, you know, may have  
24 been additionally reset and -- on September 17th, or  
25 that may have been the final completion of the reset

Hunters Capital, LLC v. City of Seattle

Kevin T. Faulkner

Page 152

1 that occurred in August. I can't tell.

2 The forensic artifacts just show me basically  
3 when the phone started up after a reset occurred. It  
4 doesn't actually say when the reset was initiated.  
5 Typically, you reset a phone, and then it reboots  
6 immediately, but if for any reason it didn't, that could  
7 be the startup. I can't say. All I can see is the  
8 reset that occurred on the 17th.

9 BY MR. REILLY-BATES:

10 Q. Okay. And would you admit that you're  
11 speculating when you state that the reset that occurred  
12 on September 17th might have been caused by an earlier  
13 reset that restarted up when the phone was turned on  
14 again?

15 MR. CRAMER: Objection. Form.

16 A. No. I said it could be, and technically, it  
17 can be. It's the -- you get the date when it started  
18 up, but beyond that, I don't know if it was or wasn't,  
19 just that it can be.

20 BY MR. REILLY-BATES:

21 Q. Okay. So you have no -- no forensic evidence  
22 or no other evidence -- well, I should say you have no  
23 forensic evidence from the device or from any data  
24 extracted from the device or iCloud backups or iCloud  
25 accounts that would substantiate the claim that the

Hunters Capital, LLC v. City of Seattle

Kevin T. Faulkner

Page 158

1 Q. Okay. Well, maybe you could tell me -- tell me  
2 what the row numbers on the left-hand column mean then.

3 A. Those are the row IDs being tracked in the  
4 messages table within the sms.db database. So I believe  
5 this is all of the rows that exist in that table, and  
6 this is just select columns. There are more columns  
7 going out to the right, but no more rows.

8 Q. I see.

9 So -- so from this -- from this Figure 29, are  
10 you able to infer that earlier numbered rows once  
11 existed, but have been deleted from the column?

12 A. I would say that, from these numbers, you can  
13 infer that earlier row IDs, or lower row IDs, once did  
14 exist on this phone or its prior phones. As you move  
15 from phone to phone, over time, if you move your text  
16 message data along with you, those row ID numbers are  
17 retained and continue to increment. They don't reset to  
18 zero again.

19 Q. Okay.

20 A. So that would be messages that were once on  
21 this phone or any of her prior phones from which a  
22 backup and restore process moved that data from one  
23 phone to another.

24 Q. Okay. What did you mean on Page 43, when you  
25 state that, "In contrast, the artifacts reviewed on Best

1 iPhone XS Max are consistent with periodic deletion over  
2 time rather than a bulk deletion"?

3 A. I recall analyzing Chief Best's phone to try to  
4 figure out whether or not text messages were deleted  
5 periodically versus could they have been all deleted,  
6 for example, on the last day.

7 And looking at the artifacts in the sms.db, in  
8 this messages table that we discussed in Figure 29, as  
9 well as the chats table, the artifacts are consistent  
10 with deletion over time, not all in one day at the end.

11 Q. Okay. Did you talk to any other  
12 representatives or employees at the City who offered any  
13 evidence as to Chief Best's practices with respect to  
14 deleting text messages on her phone, besides Chief Best?

15 A. I don't recall speaking with any City employees  
16 about Chief Best's practices.

17 Q. Okay.

18 A. I don't recall that, no.

19 Q. And did you ever learn that anybody else could  
20 have or did make any deletions to text messages on  
21 Chief Best's phone?

22 A. I would say that I don't know one way or the  
23 other. I don't have any information on that.

24 Q. Do you know when Chief Best received a  
25 litigation hold in this case?

1 received for Chief Best included duplicates.

2 Q. Okay. So you're unable to determine the exact  
3 number of actual text messages that were -- the City was  
4 able to reconstruct, based on the uncertainty caused by  
5 those duplicates. Wouldn't that be a fair statement?

6 A. Yes, I think that's fair.

7 Q. Okay. Let's go to Chris Fisher on Page 6.  
8 Now, what did you mean when you state, "I understand the  
9 date reported by the City to have been approximate"?

10 A. That I -- I -- from memory, that Mr. Fisher  
11 said something about, like, the -- the fall or winter or  
12 something, and the date reported by the City was based  
13 on that. But then later, analyzing the data, we were  
14 able to see a more precise date.

15 Q. Okay. So were you, in fact, able to determine  
16 that -- whether or not there was a factory reset that  
17 was performed on Mr. Fisher's phone on December 3, 2020?

18 A. Let me see if my report reflects that date. I  
19 believe what I had seen was artifacts consistent with a  
20 restore from an iCloud backup specifically.

21 Sorry. Is the audio cutting out?

22 Q. No, no, no. I can hear you. I'm sorry. Did  
23 you hear a sound?

24 A. Yes.

25 Q. Okay.

Hunters Capital, LLC v. City of Seattle

Kevin T. Faulkner

Page 185

1           A. I was saying I thought artifacts related to a  
2 restore from an iCloud backup on November 3rd of 2020.

3           Q. Okay. So Mr. Leatha's conclusion that a reset  
4 occurred on November 3, 2020, was -- was accurate?

5           A. I believe that was accurate, yes. The restore,  
6 yes.

7           Q. And did you ever learn why or how the City had  
8 inaccurately stated that a factory reset occurred on  
9 December 3rd of 2020?

10          A. As reflected in my report, I understand that,  
11 you know, as I said, the date was approximate, and that  
12 basically he initially believed it was December 3rd, but  
13 given the fact that it was restored on November 3rd,  
14 it's more likely that -- well, it would have had to have  
15 occurred before the restore.

16          Q. Okay. So was the -- was the described --  
17 described reset -- factory reset on December 3, 2020,  
18 was that information that was provided by Mr. Fisher,  
19 himself?

20          A. I don't know.

21          Q. Did you know about this discrepancy in the  
22 reset date prior to issuing your report in February of  
23 2022?

24          A. I'm not sure. It's possible, but I -- I don't  
25 recall.

Hunters Capital, LLC v. City of Seattle

Kevin T. Faulkner

Page 213

1 R next to it, so it says, "So should have the text with  
2 Michelle."

3 Do you see that?

4 A. "Should have the text." I -- oh, yes, I see  
5 the "should have the text with Michelle," yes.

6 Q. So -- and he's referring to Michelle Chen;  
7 correct?

8 A. That's my understanding, yes.

9 Q. And have you seen the text message that he --  
10 that he's referring to?

11 A. I don't know if I have or haven't. I -- I've  
12 looked through the text messages included as an exhibit  
13 to Regi's deposition, but I didn't specifically look if  
14 there were any with Michelle or not.

15 Q. Have you ever seen any text messages with  
16 Michelle that you relied upon for any of your opinions  
17 in this case?

18 A. I -- nothing I recall, no.

19 Q. Okay. Let's flip over to the next page.

20 Now, actually, at the very bottom of

21 Faulkner\_10, it says, "September 17, 18. Tried to

22 restore but found not backups."

23 Who made that comment?

24 A. I'm sorry; who made what?

25 Q. Who made the comment that they tried to



1 restore, but found no backups? I'm assuming that's a  
2 typo.

3 A. That is, I'm sure, indeed, a typo. I -- I  
4 don't recall specifically if it was Regi or Emmanuel,  
5 but I -- I believe it was one or the other or both of  
6 them.

7 Q. So they tried to restore the phone on  
8 September 17th. Is that what they were telling you  
9 during this meeting?

10 A. My understanding is, they were telling me that  
11 on September 17th, they sought to see if a backup  
12 existed in the mayor's iCloud account that could be  
13 restored onto a blank phone.

14 Q. Okay. And did they tell you whether they were  
15 successful in that effort?

16 A. My understanding is, they were successful in  
17 the effort of connecting a phone to the mayor's iCloud  
18 account and looking to see whether or not any backups  
19 were available to restore, but they found that there  
20 were no backups available in the iCloud account at that  
21 time.

22 Q. Okay. And in the next paragraph, the first  
23 line is, "R has 9/17 as iCloud restore date." And then  
24 he writes -- or you wrote, "He thinks that attempt was  
25 before giving the phone to Michelle. Thinks it was an

1 old phone - surplus or test phone."

2 What is he referring -- what are you referring  
3 to there?

4 A. I was digging in with more questions about how  
5 they performed this check, to see whether or not there  
6 were any backups present in the mayor's iCloud account,  
7 and I was asking, you know, when they believed that  
8 happened, if they had any specific recollection of a  
9 date, or if they had any recollection of it happening  
10 before or after certain events, and I was asking about  
11 what phone they used to do that process, whether they  
12 procured a new phone or used a test phone or reused the  
13 iPhone 8 Plus FirstNet to connect and attempt to  
14 download backups.

15 Q. And do you think it's possible that they --  
16 they used the iPhone First- -- iPhone 8 Plus FirstNet  
17 phone to -- to perform the backups for the restore and  
18 backup?

19 MR. CRAMER: Objection. Form. Foundation.  
20 Go ahead.

21 A. I mean, I would say that I think anything's  
22 possible, but looking at my notes, at what I asked them,  
23 you know, Regi responded that he thought it was an old  
24 phone, surplus phone, or test phone.

25 And I believe elsewhere in the notes here,

1 there's more related to that -- that question. Emmanuel  
2 said he thought it was possible it was the cracked  
3 screen phone. That refers to the iPhone 8 Plus  
4 FirstNet. But he didn't see any backups available. I  
5 think there may have even been more here on that.

6 BY MR. REILLY-BATES:

7 Q. Okay. So it was possible that Regi and  
8 Emmanuel had attempted to restore an old backup using  
9 the mayor's iPhone 8 Plus FirstNet with the cracked  
10 screen?

11 MR. CRAMER: Objection. Form.

12 A. I'd say my recollection of the discussion with  
13 them was, they -- they were unsure what phone it was,  
14 and thought it might have been a test phone, at one  
15 point thought it might have been the cracked screen  
16 phone, at other points thought it was not the cracked  
17 screen phone.

18 They -- they -- I did not get a clear and  
19 specific answer as to exactly which phone it was. It  
20 was a bit unclear.

21 BY MR. REILLY-BATES:

22 Q. Okay. And let's see here. One, two, three,  
23 four, five, six -- seven lines down from the top of that  
24 paragraph, there's a comment from -- attributed to  
25 Emmanuel. It says, "Don't recall wiping the phone, but

1 remembers trying to process on some phone."

2 When he's talking about not recalling wiping  
3 the phone, is he referring to the iPhone 8 Plus  
4 FirstNet, or is he referring to some other phone?

5 A. I believe, given the -- the fact that that's  
6 right under the previous answer we were just talking  
7 about --

8 Q. Yeah.

9 A. -- that I likely described the process in order  
10 to restore a phone, means you first must wipe the -- the  
11 phone if it's not new out of the box. And I asked, does  
12 Emmanuel recall on 9/17 wiping the phone, and then  
13 attempting to restore, and that he does not recall that.

14 Q. Okay. Now, at the bottom of this paragraph,  
15 the last four lines state -- attributes a statement to  
16 Emmanuel. It says, "Says Braden was aware the phone was  
17 wiped, that they would have communicated this to him."

18 And Regi wrote -- writes, "Braden not given  
19 dates, just that it had been wiped."

20 And then Regi also writes, "Info to Braden may  
21 have happened in phone conversation, but can check Regi  
22 to Braden SMS messages."

23 So the question there is, Braden wasn't given  
24 the dates of the -- the fact that the iPhone 8 Plus  
25 FirstNet had been factory reset on September 17th; isn't

1 that correct?

2 MR. CRAMER: Objection. Form.

3 Go ahead.

4 A. I think -- I believe what I was asking, and the  
5 responses I was getting, I believe what that pertained  
6 to was when the iPhone 8 Plus FirstNet had been wiped  
7 more broadly. For example, if, as claimed, it was wiped  
8 in August, was there any communication about that.

9 You know, if they don't remember the date, did  
10 they perhaps send the date to Braden before sending him  
11 the phone? And the answer was that, you know, no, that  
12 they -- they disclosed to Braden that the phone had been  
13 wiped, and, you know, I understand he was receiving it  
14 to try to recover data, but there wasn't anything that  
15 documented the date -- any dates of any wipes that was  
16 sent to Braden, that Regi or Emmanuel was aware of.

17 MR. REILLY-BATES: Okay. All right. One  
18 second here. I'm going to drop another document into  
19 the chat that we'll mark as Exhibit 9, please.

20 (Exhibit No. 9 marked.)

21 MR. REILLY-BATES: And let the record  
22 further reflect that this is an email containing call  
23 notes dated October 28, 2021, and further identified as  
24 Faulkner\_15 through Faulkner\_16.

25 ////

Hunters Capital, LLC v. City of Seattle

Kevin T. Faulkner

Page 227

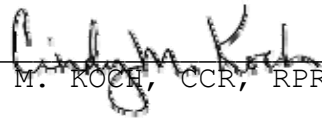
C E R T I F I C A T E

STATE OF WASHINGTON

COUNTY OF PIERCE

I, Cindy M. Koch, a Certified Court Reporter in  
and for the State of Washington, do hereby certify that  
the foregoing transcript of the deposition of Kevin T.  
Faulkner, having been duly sworn, on August 17, 2022, is  
true and accurate to the best of my knowledge, skill and  
ability.

IN WITNESS WHEREOF, I have hereunto set my hand  
and seal this 18th day of August, 2022.

  
CINDY M. KOCH, CCR, RPR, CRR



My commission expires:

JUNE 9, 2026

BUELL REALTIME REPORTING, LLC  
206.287.9066 | 800.846.6989